

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS VII LLC,
Petitioner,

v.

POZEN INC.,
Patent Owner.

Cases IPR2015-01241(Patent 6,926,907 B2) and
IPR2015-01344 (Patent 8,858,996 B2)¹

Before TONI R. SCHEINER, LORA M. GREEN, and
JACQUELINE WRIGHT BONILLA, *Administrative Patent Judges*.

SCHEINER, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding
37 C.F.R. § 42.5

¹ This order addresses issues that are the same in the identified case. We exercise our discretion to issue one order to be filed in each case. The parties are authorized to use this style heading when filing a single paper in each proceeding, provided that such heading includes a footnote attesting that “the word-for-word identical paper is filed in each proceeding identified in the heading.”

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A conference call was held on August 18, 2015, between Ricardo Rodriguez for Pozen Inc. (“Patent Owner”); Amy LaValle for the Coalition for Affordable Drugs VII LLC (“Petitioner”); and Administrative Patent Judges Scheiner, Green, and Bonilla. Patent Owner requested the call to seek authorization to file a motion for additional discovery regarding four categories of information, discussed below. *See* Mr. Rodriguez’s email communication of August 10, 2015 (attached).

(1)

Patent Owner is seeking documents sufficient to determine whether Petitioner took or intends to take a financial position in Pozen Inc., or Horizon Pharma (identified as the exclusive licensee to the ’907 patent (*see* Paper 6)), from which it would have or will profit regardless of whether an *inter partes* review is instituted in these cases, and regardless of the outcome of any *inter partes* review instituted in these cases. Patent Owner contends that this information is relevant to whether the Board should deny institution of an *inter partes* review on the grounds that Petitioner is making inappropriate use of the proceeding.

Petitioner’s position is that intent is not relevant to whether *inter partes* review should be granted, and in any case, Petitioner’s profit motive is publically known.

Having heard the respective positions of the parties, the panel conferred and concluded that an economic motive for challenging a patent claim does not itself raise the issue of inappropriate use of the process. *See Coalition for Affordable Drugs VI, LLC v. Celgene Corporation*, Case IPR2015-01092, slip op. at 3 (PTAB Sept. 25, 2015) (Paper 19).

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Accordingly, we decline to authorize Patent Owner's request for additional discovery.

(2)

Patent Owner is seeking production of all documents that the Board may order to be produced subsequently in two different cases, IPR2015-01086 or IPR2015-01136, involving another "Coalition for Affordable Drugs" entity as a petitioner. Patent Owner contends those documents will be relevant to whether the Board should deny institution of an *inter partes* review in this case on the ground that Petitioner is making inappropriate use of the proceeding.

As no production has been ordered in IPR2015-01086 or IPR2015-01136, Patent Owner's request is premature, and we decline to authorize Patent Owner's request for additional discovery of documents that may or may not be produced at some point in the future.

(3)

Patent Owner also is seeking all categories of documents that the Board may order to be produced subsequently in yet another case, IPR2015-00990, again involving a different "Coalition for Affordable Drugs" entity as a petitioner. Patent Owner contends those documents will be relevant to identifying undisclosed real parties-in-interest in this case.

As no documents have been produced in IPR2015-00990 in response to an order granting a motion for additional discovery in that case, Patent Owner's request is premature. We decline to authorize Patent Owner's request for additional discovery of documents that may or may not be produced at some point in the future.

(4)

Finally, Patent Owner is seeking clarification (e.g., by interrogatory) of whether a number of “defendants in the related Hatch-Waxman case, or parties that control or are controlled by . . . them, contributed to the Petitioner hedge fund or any identified real party in interest.” *See* item (4) of Mr. Rodriguez’s attached email.

According to Patent Owner, this information “is relevant to the RPIs, and specifically whether any defendant in related Hatch-Waxman litigation is also an investor in the hedge funds,” which Patent Owner contends “would constitute an end-run around the one-year deadline for one of the petitions.” *Id.* In addition, Patent Owner contends this information is relevant to the question of whether sanctions are appropriate.

The Board has identified factors relevant to determining whether a discovery request is “in the interest of justice.” *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, Case IPR2012-00001, slip op. at 6–7 (PTAB Mar. 5, 2013) (Paper 26). The first of these factors weighs decisively in our consideration of Patent Owner’s request:

More Than a Possibility and Mere Allegation—The mere possibility of finding something useful, and mere allegation that something useful will be found, are insufficient to demonstrate that the requested discovery is necessary in the interest of justice. The party requesting discovery should already be in possession of evidence tending to show beyond speculation that in fact something useful will be uncovered. [In this context, “useful” means “favorable inn substantive value to a contention of the party moving for discovery.”]

Id.

Here, Patent Owner has identified insufficient evidence already in its possession that tends to show beyond speculation that something useful

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would be uncovered were we to grant discovery on item (4). Petitioner has provided insufficient evidence to indicate that such discovery might shed light on whether an unnamed party has or could have exerted control over the filing of the Petition in this case, for example. Accordingly, we decline to authorize Patent Owner's request for additional discovery.

It is:

ORDERED, that Patent Owner's request for authorization to file a motion for additional discovery is *denied*.

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For PETITIONER:

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*****ATTACHMENT*****

From: Rodriguez, Ricardo [<mailto:rr@cooley.com>]
Sent: Monday, August 10, 2015 2:44 PM
To: Trials
Cc: Stephen Hash; Krumplitsch, Susan; Amy E. LaValle; Jerry C. Harris Jr.; Rodney Carroll
Subject: IPR2015-01241 & IPR2015-01344: Request for Conference Call with Board

Dear PTAB:

I write as Patent Owner to request a conference call with the Board to seek authorization to file a motion for additional discovery. Specifically, Patent Owner will seek:

(1) Documents sufficient to determine whether:

- Petitioner took a financial position in Horizon Pharma or Pozen, Inc. from which it would have profited if the stock price declined when the filing of either of the IPR petitions was made public;
- Petitioner has taken or intends to take a financial position in Horizon Pharma or Pozen, Inc. from which it will profit if the PTAB institutes an IPR for either IPR; and
- Petitioner has taken or intends to take a financial position in Horizon Pharma or Pozen, Inc. from which it will profit if the PTAB declines to institute an IPR for either IPR; and
- Petitioner has taken or intends to take a financial position in Horizon Pharma or Pozen, Inc. from which it will profit if the PTAB finds in favor of the Patent Owner for any claim in a final decision in either IPR;

(2) All documents subsequently ordered to be produced in IPR2015-01086 or IPR2015-01136, i.e., the offering documents referred to in Hayman Capital Management, L.P.'s Form ADV, Part 2A Brochure dated June 1, 2015, for (1) the Hayman Credes Master Fund, L.P. and (2) the Hayman Orange Fund SPC-Portfolio A.

(3) All categories of documents ordered to be produced in IPR2015-00990, i.e., any agreements, in the possession of Petitioner, relating to the control or ability to control any aspect of the current proceeding by a party not designated as Petitioner or a real party-in-interest in the Petition. Such agreements include those indicating that any person or party (other than Petitioner or designated real parties-in-interest) provided direction to, or had the authority to provide direction to, Petitioner or its counsel in relation to this proceeding, including persons or parties who reviewed, or were given the opportunity to review, papers filed in this proceeding.

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(4) To identify (via interrogatory or other mutually agreeable way) whether the following defendants in the related Hatch-Waxman case, or parties that control or are controlled by the them, contributed to the Petitioner hedge fund or any identified real party in interest:

ANCHEN PHARMACEUTICALS, INC. and
ANCHEN, INC.
DR. REDDY'S LABORATORIES INC. and
DR. REDDY'S LABORATORIES LTD.
MYLAN PHARMACEUTICALS INC.,
MYLAN LABORATORIES LIMITED, and
MYLAN INC.
ACTAVIS LABORATORIES FL, INC. and
ACTAVIS PHARMA, INC.
LUPIN LTD. and LUPIN
PHARMACEUTICALS INC.

As the Board is aware, these IPR petitions were filed through hedge funds run by Kyle Bass, and apparently many more remain to be filed. There have been several publicly-made representations that the petitions are in the public interest, because they will lead to lower cost drugs. The information sought in categories (1)-(2) is relevant to whether the Board should deny institution of the IPR on the grounds that it is an inappropriate use of the proceeding because the hedge funds stand to make money for their investors regardless of whether the petitions are successful. The information in categories (3)-(4) information is relevant to the RPIs, and specifically whether any defendant in related Hatch-Waxman litigation is also an investor in the hedge funds. If so, this would constitute an end-run around the one-year deadline for one of the petitions. All categories are also relevant to the question of whether sanctions are appropriate.

A meet-and confer was held on August 5. Counsel for the parties are available for a call with the Board on the dates below this week:

- Tuesday, August 11, 10:00am-5:00pm Central

- Thursday, August 13, 9:00am-3:00pm Central

Please let me know if you would like additional days of availability. Sincerely,

Ricardo Rodriguez, lead counsel for Patent Owner

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